



California Fair Political Practices Commission

May 10, 1990

Terry B. Stevenson
Assistant City Attorney
Office of the City Attorney
P.O. Box 6459
Burbank, CA 91510

Re: Your Request for Informal Assistance
Our File No. I-89-719

Dear Mr. Stevenson:

You have requested advice on behalf of Mr. Jim Rogers concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act")¹ to his duties as the Treasurer for the City of Burbank. The following advice is based upon the facts provided in your letter and our telephone conversations. Since your letter does not provide sufficient facts to render specific advice, we are treating your request as one for informal assistance.²

Our advice is limited only to provisions of the Act. Since we cannot provide advice about other conflict-of-interest laws, such as Government Code Section 1090, we suggest that you contact the Attorney General's office.

QUESTIONS

1. Mr. Rogers has personal investment interests with the Bank of America, First Interstate Bank, Chase Manhattan Bank and Security Pacific National Bank. May he participate in governmental decisions regarding the investment of city funds in any of these banks?

2. For purposes of participating in a governmental decision under the Act, is there a distinction between the investments which Mr. Rogers personally holds and the investments held in his self-directed IRA?

CONCLUSIONS

¹ Government Code Sections 82000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

1. Under Regulation 18702.1(a)(2), Mr. Rogers may not participate in governmental decisions regarding the investment of city funds in Bank of America. Under Regulation 18702.2(a), Mr. Rogers may not participate in governmental decisions regarding the investment of city funds in First Interstate Bank, Chase Manhattan Bank and Security Pacific National Bank if there will be a material financial effect.

2. Under the Act, there is no distinction between the investments which Mr. Rogers personally holds and the investments held in his self-directed IRA.

FACTS

Mr. Rogers is the Treasurer for the City of Burbank. In this position, he is involved in making governmental decisions regarding the investment of city funds in various banks. Such investments may be made with the Bank of America, First Interstate Bank, Chase Manhattan Bank or Security Pacific National Bank.

Mr. Rogers' personal investments include over \$10,000 of Bank of America common stock and an individual retirement account (IRA). The investments in his self-directed IRA include a Bank of America bond in excess of \$10,000, a First Interstate Bank zero coupon bond in excess of \$1,000, a Security Pacific National Bank zero coupon bond in excess of \$1,000, and a Chase Manhattan Bank zero coupon bond valued between \$1,000 and less than \$10,000.

ANALYSIS

The Act prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family or on, among other things:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(Section 87103(a)-(d).)

As the Treasurer of the City of Burbank, Mr. Rogers is a public official. (Section 82048.) Therefore, he may not participate in a decision if it is reasonably foreseeable that the decision will have a material financial effect on any business entity in which he has an interest of \$1,000 or more. (Section 87103(a).)

A public official makes a governmental decision when he votes on a matter, obligates or commits his agency to any course of action, or enters into a contractual agreement on behalf of his agency. (Regulation 18700(b), copy enclosed.)

Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, an effect that is merely a possibility is not reasonably foreseeable. (Downey Cares v. Downey Community Development Com. (1987) 196 Cal. App. 3d 983; In re Thorner 1 FPPC Ops. 198.)

Materiality

The Commission has adopted several regulations which define material financial effect. Regulation 18702 sets forth the general guidelines for determining whether an official's financial interest in a decision is "material" as required by Section 87103. If the official's financial interest is directly involved in the decision, Regulation 18702.1 applies to determine materiality. If the official's financial interest is indirectly affected by the decision, Regulations 18702.2 through 18702.6 apply to determine whether the effect of the decision is material.

Regulation 18702.1(a) (copy enclosed) contains guidelines for determining when the effect of a decision on a business entity directly involved in a decision is material. Regulation 18702.1(a)(2) states that the effect of a decision is material if:

Any business entity (other than one covered by Section 18702.2(a) or (b)) in which the official has a direct or indirect investment of \$1,000 or more, any business entity covered by Section 18702.2(a) or (b) in which an official has a direct or indirect investment of \$10,000 or more, or any business entity in which the official is an officer, director, partner, trustee, employee, or holds any position of management, is directly involved in a decision before the official's agency; ...

Under Regulation 18702.1(b), a business entity is directly involved in a decision before an official's agency when that entity:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

As the City Treasurer, Mr. Rogers must make decisions regarding the investment of city funds in various banks. Under the Act, any bank with which he is considering doing business would be perceived as "a named party or subject of the proceeding." (Regulation 18702.1(b)(2), Gatto Advice Letter, No. A-85-253, copy enclosed.)

The four banks with which Mr. Rogers has his personal investments are all business entities listed on the New York Stock Exchange. However, Regulation 18702.1(a)(2) only applies to the banks in which Mr. Rogers has an investment interest of \$10,000 or more. Since he has a \$10,000 investment in Bank of America common stock and a \$10,000 Bank of America bond, Mr. Rogers may not participate in any decisions regarding the investment of city funds in Bank of America.

Regulation 18702.2 (copy enclosed) must be used to determine if there is a material financial effect on Mr. Rogers' other investments which are under \$10,000. Regulation 18702.2(a) states that the effect of a decision is material for any business entity listed on the New York Stock Exchange or the American Stock Exchange if:

(1) The decision will result in an increase or decrease to the gross revenues for a fiscal year of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. nonindustrial corporations, in which case the increase or decrease in gross revenues must be \$1,000,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$100,000 or more,

except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. nonindustrial corporations, in which case the increase or decrease in expenditures must be \$250,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. nonindustrial corporations, in which case the increase or decrease in assets or liabilities must be \$1,000,000 or more.


The Act prohibits Mr. Rogers from participating in or attempting to influence any governmental decisions that would have foreseeable and material financial effects, as discussed above, on any of the other banks in which he has investments. It is incumbent upon Mr. Rogers to refer to Regulation 18702.2(a) each time he is considering an investment with First Interstate Bank, Chase Manhattan Bank or Security Pacific National Bank to determine if the effect is material. If it is, he may not participate in the investment decision.

With respect to participation under the Act, there is not a distinction between Mr. Rogers' investment in Bank of America common stock, which he personally holds, and the investments in his self-directed IRA.

Since you have not provided us with the facts of a specific decision, we can only render general guidance and informal assistance at this time. I trust that this letter has provided the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Jill R. Stecher
Counsel, Legal Division

KED:JRS:plh

Enclosures



OFFICE OF THE CITY ATTORNEY
275 E. OLIVE AVE. • P.O. BOX 6459 • BURBANK, CALIFORNIA 91510
(818) 953-9614

December 4, 1989

Jill Stecher
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Request for Formal Written Advice
File No. 201-1

Dear Ms. Stecher:

Jim Rogers, City Treasurer for the City of Burbank is requesting formal written advice pursuant to Government Code Section 83114(b) and Section 18329 of the Regulations of the Fair Political Practices Commission. I am the Assistant City Attorney for the City of Burbank and have been authorized by Mr. Rogers to make this request relating to Mr. Rogers duties under the Fair Political Practices Act.

Mr. Rogers owns in excess of \$10,000 in common stock in the Bank of America. Further, as part of the investments in his individual retirement account, he holds a Bank of America Bond in excess of \$10,000, a First Interstate Bank Bond in excess of \$1,000, and a Security Pacific National Bank Bond in excess of \$1,000.

In his position as Treasurer for the City of Burbank, Mr. Rogers is involved in making governmental decisions regarding the investment of City funds in various banks. Among these could be the Bank of America, Chase Manhattan or Security Pacific National Bank.

In light of these facts I would request you to answer the following questions:

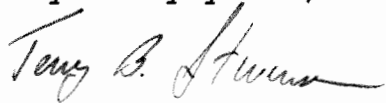
1. Would Mr. Rogers be prohibited from making governmental decisions involving the investment of City funds in the aforementioned institutions?
2. Is there a distinction between his direct investment of common stock with Bank of America and the investments in his individual retirement account? Specifically, is Mr. Rogers prohibited from making governmental decisions regarding the investment of City funds in the aforementioned institutions if his investments in those institutions are part of a IRA?

Jill Stecher
December 4, 1989
Page 2

3. If you conclude that either or both of the above investments create a conflict of interest, what options could you suggest that would allow Mr. Rogers to maintain his investments and still make the decisions necessary to the discharge of his duties as City Treasurer.

If you have any questions, or if you require additional information regarding this request, please do not hesitate to call me. Your immediate attention to this matter will be greatly appreciated.

Very truly yours,



Terry B. Stevenson
Assistant City Attorney

TBS/cjc
TSPFPPC